UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

craigslist, Inc.,

Plaintiff,

v.

HENRY D. McMASTER, in his official capacity as ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA; DAVID PASCOE; BARBARA R. MORGAN; C. KELLY JACKSON; JAY E. HODGE, JR.; W. BARNEY GIESE; DOUGLAS A. BARFIELD, JR.; TREY GOWDY, III; JERRY W. PEACE; SCARLETT WILSON; CHRISTINA T. ADAMS; DONALD V. MYERS; EDGAR L. CLEMENTS, III; ROBERT M. ARIAIL; I. MCDUFFIE STONE, III; GREGORY HEMBREE; AND KEVIN S. BRACKETT, in their official capacities as SOUTH CAROLINA CIRCUIT SOLICITORS,

Defendants.

Civil Action No. 2:09-1308-CWH

COMPLAINT FOR IMMEDIATE INJUNCTIVE AND OTHER RELIEF

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COMPLAINT

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief pursuant to 42 U.S.C § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, brought by craigslist, Inc. ("craigslist" or "Plaintiff") to enjoin a threatened prosecution in violation of federal law and the U.S. Constitution and to obtain a declaration of the respective rights of the parties.

2. craigslist operates a popular Internet classified service used by tens of millions of Americans each month, generally free of charge, to find employment, housing, goods and services, friendship, romance, and local community information. Over 50 million Americans use craigslist each month, posting over 40 million classified ads in over 100 categories, generating over 20 billion page views per month. Although used overwhelmingly by well-intentioned, law-abiding citizens, like any means of communication, the craigslist website can be abused by third-parties in connection with crimes including prostitution, despite craigslist's best efforts to prevent such abuse.

3. Defendant Henry D. McMaster ("McMaster" or "Defendant McMaster"), the Attorney General of the State of South Carolina, has recently made, and is continuing to make, direct and public threats to criminally prosecute craigslist and its management based on the alleged presence on the craigslist website of third-party ads or notices that, according to Defendant McMaster, solicit prostitution or other unlawful activity or contain pornographic images. Defendant McMaster first stated this threat in a letter addressed to craigslist that he posted on his website on May 5, 2009 and that he

publicized in a press conference on that date. That letter stated that craigslist management would be subject to criminal investigation and criminal prosecution if it did not, by 5:00 p.m. on May 15, 2009, remove all categories and functions on the South Carolina-directed portions of the craigslist website that make it possible for third parties to post content soliciting prostitution or containing pornographic images.

4. As explained in detail below, both long before Defendant McMaster's public threat of prosecution on May 5 and since then, craigslist has engaged in a wide variety of voluntary actions to attempt to deter third persons from abusing its website by posting ads soliciting unlawful prostitution or containing other forms of unlawful content. These actions included, but were not limited to, special voluntary measures to control postings to the site's "erotic services" subcategory that craigslist announced in November 2008 in a joint statement signed by itself and 40 state attorneys general, including Defendant McMaster. These measures resulted in a dramatic drop in the number of postings to the "erotic services" subcategory.

5. On May 12, 2009, craigslist voluntarily announced and implemented an additional strategy to attempt to further deter third parties from posting ads soliciting unlawful prostitution or containing pornographic images in violation of craigslist's own content guidelines. Specifically, it voluntarily closed the "erotic services" subcategory and it established a new "adult services" subcategory with an entirely new posting procedure. Unlike all of the other categories and subcategories of the craigslist website, for the new "adult services" subcategory craigslist has interposed an advance, manual screening process under which every proposed ad is individually reviewed to test its

compliance with craigslist's posting policies, which prohibit ads soliciting illegal conduct such as prostitution as well as pornographic images. Proposed ads deemed to be out of compliance will not be posted.

6. craigslist has taken these many voluntary actions to deter abuse of its website as a matter of good corporate citizenship, and not because it has any legal obligation to do so. In fact, both a federal statute, 47 U.S.C. § 230, and the First Amendment to the United States Constitution, generally prohibit imposing liability on an Internet forum such as craigslist for unlawful content posted by third parties.

7. Despite craigslist's legal immunity from criminal or civil liability under State law for unlawful third-party content on its website, and despite the numerous good-faith actions that craigslist has voluntarily taken to deter abuse of its service by third parties notwithstanding its legal immunity, McMaster has persisted in threats to criminally prosecute craigslist on the basis of third-party content appearing on the craigslist website. Specifically, just minutes after his unilaterally imposed deadline of 5:00 p.m. on May 15, McMaster issued the following statement on the public website of the Attorney General's office:

> "As of 5:00 p.m. this afternoon, the craigslist South Carolina site continues to display advertisements for prostitution and graphic pornographic material. This content was not removed as we requested. We have no alternative but to move forward with criminal investigation and potential prosecution."

8. Given Defendant McMaster's persistent and continuing public threats, craigslist is presently faced with the untenable choice of either completely shutting down all portions of its website that are directed at South Carolina or else putting itself and its management at risk of imminent criminal prosecution by Defendant McMaster.

9. craigslist is entitled to immediate injunctive and declaratory relief preventing Defendant McMaster from continuing to threaten craigslist and its management with criminal prosecution, because those threats in and of themselves do, and any following through on those threats would, violate craigslist's fundamental rights under 47 U.S.C. § 230, the First Amendment to the U.S. Constitution, and the Commerce Clause of the U.S. Constitution.

JURISDICTION AND VENUE

10. This case arises under the U.S. Constitution and the laws of the United States and presents a federal question within this Court's jurisdiction under Article III of the Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3). It seeks remedies under 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988.

11. Venue is proper in this district under 28 U.S.C. § 1391(b).

12. Assignment of this case to the Charleston Division of this Court is appropriate under Local Civil Rule 3.01(A) because Defendant McMaster's repeated threats to criminally prosecute craigslist and its management concern the operations of craigslist's services throughout the State of South Carolina. craigslist operates and maintains a particular site that is specifically directed at the Charleston, South Carolina, metropolitan area. That site is one of the two largest craigslist sites that are dedicated to South Carolina locales, and that site is regularly used by thousands of citizens within this division. Defendant McMaster's threatened prosecution therefore directly affects the operations of craigslist directed to this area and the expressive rights of craigslist and its

users in this area. Accordingly, a substantial part of the events or omissions giving rise to Plaintiff's claim occurred and are occurring in this division.

THE PARTIES

13. Plaintiff craigslist, Inc. is a Delaware corporation, with its principal place of business in San Francisco, California.

14. Defendant Henry McMaster is the Attorney General of the State of South Carolina and is sued in his official capacity. He is the chief law enforcement officer of the State of South Carolina. Attorney General McMaster retains general prosecutorial authority to ensure that the laws are faithfully executed and has statewide authority to prosecute criminal cases. Pursuant to the Constitution of the State of South Carolina, Defendant McMaster is "the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record." S.C. CONST. ART. V, § 24.

15. Defendants David Pascoe, Barbara R. Morgan, C. Kelly Jackson, Jay E. Hodge, Jr., W. Barney Giese, Douglas A. Barfield, Jr., Trey Gowdy, III, Jerry W. Peace, Scarlett Wilson, Christina T. Adams, Donald V. Myers, Edgar L. Clements, III, Robert M. Ariail, I. McDuffie Stone, III, Gregory Hembree and Kevin S. Brackett are the Solicitors for the sixteen Judicial Circuits in the State of South Carolina, and are sued in their official capacities as such. Defendant Scarlett Wilson is the Solicitor for the Ninth Circuit, which includes Charleston, South Carolina. Upon information and belief, Defendant Solicitors David Pascoe (Dorchester County), C. Kelly Jackson (Clarendon County), I. McDuffie Stone (Colleton County), and Gregory Hembree (Georgetown

County) either maintain residences within the Charleston Division, and/or have offices located in and transact business in the Charleston Division.

16. They each have authority to prosecute criminal violations in their respective circuits. The Solicitors have been named as defendants herein, and this Complaint seeks injunctive and declaratory relief with respect to them, because they are subordinates of Defendant McMaster who either may be compelled to act under his direction or may be directly or indirectly influenced to follow-through on his threats to prosecute craigslist and its management.

FACTS

The craigslist Service

17. craigslist originated in San Francisco, California, in 1995. It grew from an email list created by Craig Newmark to share information about events in and around the San Francisco Bay Area with his friends and co-workers. It has steadily gained in popularity and scope as a platform for free local classified ads and discussion forums.

18. craigslist incorporated in 1999. It remains headquartered in San Francisco.

19. craigslist has approximately thirty employees who work out of offices located in the Inner Sunset neighborhood of San Francisco. The computer servers on which the craigslist website operates are located primarily in San Francisco and Phoenix, Arizona.

20. Today, the craigslist website – www.craigslist.org – is world renowned. It provides largely free, localized, online classified ads and discussion forums in over 570

cities in 50 countries worldwide, and it is one of the most visited websites in the world. It recently ranked 7th overall among internet companies in terms of English-language page views served.

21. The craigslist service is organized into separate websites dedicated to particular localities. Presently, craigslist maintains separate websites for more than 300 cities, towns and regions in the United States. There are six such websites for South Carolina — one each for Charleston, Columbia, Florence, Greenville/Upstate, Hilton Head, and Myrtle Beach. The classified ads and other postings available on craigslist are created entirely by the site's users. In other words, the people who use the service write the material that they post.

22. Users have a choice of categories and subcategories on the website within which to post an ad or notice, including "community," "personals," "discussion forums," "housing," "for sale," "services," "resumes," "events," and "jobs."

23. In general, users of craigslist do not pay to post ads or notices. The exceptions are (1) job ads in certain cities and broker apartment listings in New York City, for which a per-ad posting fee is charged; (2) ads in the recently terminated erotic services subcategory, for which craigslist, starting in late 2008, required a nominal fee charged to a valid credit card, a fee suggested to craigslist by law enforcement officials as a way to further encourage compliance with site guidelines and to make it easier for law enforcement officials to identify and apprehend anyone misusing the service in connection with unlawful activity (with 100% of net revenues to be donated to charity); and (3) ads in the newly created adult services category, for which a fee of $10 per

posting is charged, again via valid credit card, to encourage compliance with site guidelines, for law enforcement tracking purposes, and to help defray the costs associated with this new category.

24. craigslist also provides a variety of topical discussion areas which comprise a national forum where users of craigslist throughout the world may participate in dialogues encompassing numerous topics of public interest.

25. The postings on the craigslist website may be viewed entirely for free by any person with Internet access.

26. All usage of craigslist is subject to craigslist's detailed Terms of Use, which are readily available to all users through prominently displayed links throughout the site. A true and correct copy of the Terms of Use is appended as Exhibit A hereto. To post any ad, a user must first affirmatively declare his or her acceptance of these Terms of Use by clicking an "ACCEPT" button located below a full-text display of the agreement.

27. Among other things, these Terms of Use explicitly prohibit the posting or making available of any content that is "unlawful" or that "advertises any illegal service," including in particular "any offer or solicitation of illegal prostitution." The Terms of Use further explicitly prohibit posting of any material "that is pornographic or depicts a human being engaged in actual sexual conduct."

28. To promote compliance with its Terms of Use, craigslist employs various additional self-regulatory measures, including automated filters that block ads containing words or phrases that are associated with problematic content and a community flagging

system that encourages users to “flag” inappropriate ads for removal. In addition, as described below, for certain particular categories, including the now-terminated “erotic” services subcategory and the newly-created “adult services” category, craigslist has implemented additional, targeted deterrent measures.

The Former Erotic Services Subcategory of the craigslist Website

29. Until very recently, one of the “services” subcategories of the craigslist website was titled “erotic.” That subcategory was established several years ago at the request of craigslist users so that legal escort services, massage workers, exotic dancers, erotic phone lines and other services whose ads often contain adult content (and who also advertise in many other media outlets in South Carolina and elsewhere) would have a dedicated area in which to post their ads, and so that they would no longer post such ads in various other sections of the site.

30. Besides being common practice among all manner of classifieds services for decades, there are multiple advantages to having such a specially-zoned area for this class of lawful ads. Before the erotic services subcategory was established, craigslist users had been posting such ads to craigslist’s “personal” categories, to various other “services” categories, and to other sections of the website. Having a separate subcategory for such ads insulates those in the community who are not interested in reading them. It also allows craigslist to target special measures at persons who post ads of this nature, in order to deter them from crossing the line between legal and illegal content.

31. Newspaper classifieds, alternative weeklies, the telephone yellow pages, and many other print media regularly feature escort and sensual massage ads similar to those on craigslist and have done so for decades.

32. Popular mainstream search engines with "image" search features, which, unlike craigslist, are intended for persons of all ages, can search the worldwide web and rapidly locate extensive graphic materials with explicit pornographic content. Further, such search engines typically host these images on their own servers, and then make them available to anyone typing a relevant query, and in fact will sometimes serve up such images in response to queries that are wholly unrelated.

Craigslist's Voluntary Measures to Combat Illegal Activity in the "Erotic" Subcategory

33. Over time, craigslist adopted a series of special measures to attempt to prevent misuse of its website for the purpose of posting ads to the site's erotic services subcategory that violate craigslist's Terms of Use. One of these measures was a detailed warning screen for the "erotic" subcategory. The warning screen required all users wishing to view the third-party content posted in this subcategory to confirm that the following five items were true before being allowed access to the subcategory, as follows:

> "Unless **all** of the following points are true, please use your "back" button to exit this part of craigslist:
> 1) I am at least 18 years old.
> 2) I understand 'erotic services' may include adult content.
> 3) I agree to flag as "prohibited" anything illegal or in violation of the craigslist terms of use. This includes, but is not limited to, offers for or the solicitation of prostitution.

4) I agree to report suspected exploitation of minors to the appropriate authorities.[1]

5) By clicking on the links below, I release craigslist from any liability that may arise from my use of this site."

A true and correct copy of this warning screen is attached hereto as Exhibit B.

34. The warning screen for the now-terminated erotic services subcategory further stated, "Human trafficking and exploitation of minors are not tolerated - any suspected activity will be reported to law enforcement."

35. Although craigslist as a whole is designed for adult users, the warning screen went on to state that "craigslist has implemented the PICS content labeling system to assist parents and others who may be interested in content filtering," and provided a link to information about how to use such filtering.

36. In addition, in order to post any ad to the erotic services subcategory, users were first required to read and affirmatively agree to a special set of guidelines. These guidelines read as follows:

YOU MUST OBSERVE THE FOLLOWING GUIDELINES WHEN POSTING IN EROTIC SERVICES

ADS IN VIOLATION OF THE FOLLOWING GUIDELINES OR OUR TERMS OF USE ARE SUBJECT TO REMOVAL WITHOUT REFUND

1. "Erotic Services," like all categories on craigslist, may be used only for advertising LEGAL services
When using craigslist, you agree to abide by the craigslist Terms of Use, which forbid posting, emailing, or otherwise making available content that is unlawful, obscene, or which advertises illegal services.

[1] This sentence included a "link" to contact information for the National Center for Missing & Exploited Children, National Human Trafficking Resource Center, National Child Exploitation Coordination Centre (Canada), and various law enforcement agencies in several different states.

> **2. Do NOT suggest or imply an exchange of sexual favors for money – ads that do so are subject to removal without refund.**
> [. . .]
> **3. Do NOT attempt to avoid detection of forbidden language by using spelling variations or text in images – ads that do so are subject to removal without refund.**
> [. . .]
> **4. Do NOT include obscene images with your posting – ads containing obscene images are subject to removal without refund.**
> If you're not sure whether or not a particular image is obscene, do not post it.
>
> **If you are unable to follow these guidelines, do not post on craigslist.**
>
> Ads in violation of our Terms of Use or these guidelines are subject to removal without refund.
>
> craigslist may supply information about your identity to law enforcement officers in response to legal subpoena.
>
> **I have read these guidelines and will abide by them – proceed with erotic services**

A true and correct copy of the guidelines screen is attached as Exhibit C.

37. Beginning in March of 2008, craigslist has consulted extensively with U.S. state attorneys general, including Defendant McMaster, as well as with other local law enforcement officials, concerning abuse of the craigslist website by persons attempting to solicit or offer prostitution. During such consultations, craigslist has repeatedly reaffirmed that it deplores such abuse and reiterated its continuing commitment to provide law enforcement officials with information upon appropriate request for the prosecution of persons engaging in and facilitating criminal activity.

38. In November 2008, craigslist voluntarily implemented still more special measures in an effort to deter wrongdoers from posting ads soliciting or offering

prostitution in the erotic services subcategory. These additional voluntary measures grew out of cooperative discussions between craigslist and representatives of 40 State attorneys general (including Defendant McMaster) and the National Center for Missing and Exploited Children (NCMEC) and were announced in a joint statement, dated November 6, 2008, that was signed by craigslist and 40 other State attorneys general, and NCMEC. A true and correct copy of this joint statement is attached hereto as Exhibit D.

39. These additional special measures for the erotic services subcategory included the following:

> A. Telephone Number Verification: In order to post in the "erotic" subcategory, a user was required to provide a working phone number. This phone number was verified by having craigslist systems automatically transmit a numeric code to the user via telephone call or text message to the telephone number provided by the user. To complete the posting process, the user had to type that numeric code into a form on the craigslist website. Thereafter, craigslist retained in its records such user-provided telephone number so that they could be (a) used by craigslist to block subsequent postings by users found to have violated the Terms of Use, and (b) made available to law enforcement personnel pursuant to proper legal process in conjunction with actual or suspected unlawful third-party conduct relating to particular postings.
>
> B. Credit Card Verification: craigslist also required users to submit a valid credit card credential and pay a $5 fee in order to post an ad in the "erotic"

subcategory. craigslist kept this information on file as well so that it could be made available to law enforcement pursuant to proper legal process.

C. Keyword Filtering: craigslist also used electronic filtering to identify and block certain inappropriate words that it considered more likely to be associated with inappropriate postings to the "erotic" subcategory. During the week of April 23, 2009, keyword filters blocked 26% of ads submitted to the "erotic" subcategory in U.S. cities. craigslist voluntarily continued to develop, test and implement new technologies designed to identify and address attempts by abusive third parties to circumvent keyword filters.

40. In addition, in or about April of 2009, craigslist implemented measures to facilitate blocking inappropriate pornographic images from being posted to the erotic services subcategory (and to other areas of its website) in violation of its Terms of Use. These measures provided for preventing images that come to the attention of craigslist and found to be in violation of craigslist's Terms of Use from being re-posted.

41. Based upon the measures that craigslist jointly announced with Defendant McMaster and other attorneys general, the overall number of ads that users posted to the erotic subcategory on the craigslist website for U.S. cities decreased by over 80%.

42. All of the foregoing measures directed at deterring abuse of the erotic services subcategory remained in effect until that subcategory was shuttered on May 12, 2009, as described below.

Further Changes to the craigslist Website to Deter Inappropriate Third-Party Ads

43. On May 12, 2009, craigslist voluntarily undertook still further measures to deter abuse of its website by persons posting ads in violation of its Terms of Use. In particular, on that date, craigslist announced and took the following steps:

A. craigslist immediately stopped accepting new postings to the erotic services subcategory on all portions of its website directed at localities within the United States, including the six local websites provided for areas in South Carolina. It further announced that the erotic services subcategory would be terminated altogether within seven days (i.e., by May 20, 2009) after all ads previously posted to that subcategory reached their normal seven-day expiration date.

B. craigslist introduced and opened a new subcategory called "Adult Services" within the services section of its local websites in the United States, including those for South Carolina. While this new subcategory operates with many of the special deterrent measures craigslist previously employed for the erotic services subcategory (including special warnings, automatic filtering mechanisms, telephone verification, and credit card verification), it also employs one key additional measure: Each new proposed posting to the Adult Services subcategory is manually reviewed before it can appear on the website in order to ensure compliance with craigslist's posting guidelines and Terms of Use.

44. The cumulative effect of all of these measures has been dramatic, such that on May 18, 2009, for the "adult services" and soon-to-be-retired "erotic services" sections combined, across all cities in South Carolina, there were a total of 40 ads, all of

which comply with our Terms of Use. That amounts to 40 ads out of a total of 334,180 listed on craigslist's South Carolina websites. The rest of those 334,180 ads comprise a thriving marketplace for South Carolinians, offering jobs, housing, automobiles, for sale items, local services, community information, event listings, and just about everything else they may need in their everyday lives.

Defendant McMaster's Unconstitutional Threats

45. Despite craigslist's numerous voluntary actions and extensive cooperation with the State attorneys general and other law enforcement agencies, all aimed at the common goal of curtailing third-party abuse of craigslist's website, Defendant McMaster has recently threatened, and at this moment is continuing to threaten, to prosecute craigslist and its management based on allegedly unlawful content that third parties have posted on the craigslist website.

46. On May 5, 2009, Defendant McMaster, joined by a number of South Carolina law enforcement officials including Anderson County Sheriff John Skipper, Pickens County Sheriff David Stone, and Oconee County Sheriff James Singleton, held a press conference relating to craigslist.

47. At the press conference, Defendant McMaster threatened craigslist with criminal investigation and prosecution if certain types of third-party content were not removed and blocked from the South Carolina-directed portions of craigslist's website. During this press conference, Defendant McMaster referenced a letter he had addressed to craigslist's CEO, Jim Buckmaster. The same day, Defendant McMaster prominently

posted this letter on his office's official website, along with a press release about his threat.

48. In particular, Defendant McMaster's May 5, 2009 letter to Mr. Buckmaster stated "please be advised that the craigslist management may be subject to criminal investigation and prosecution by this office if the portions of [craigslist's] site dedicated to South Carolina and its municipal regions and which contain categories for and functions allowing for the solicitation of prosecution and the dissemination and posting of graphic pornographic material are not permanently removed on or before 5:00pm EST, the close of business Friday, May 15, 2009." A true and correct copy of Defendant McMaster's May 5, 2009 Letter is attached hereto as Exhibit E.

49. The following day, on May 6, 2009, a news article displayed on the website of *The State* newspaper (TheState.com) reported that "[McMaster] threatened Tuesday to charge Craigslist's [sic] chief executive, contending the popular Internet classified ad service company hasn't done enough to stop solicitation for prosecution and obscenity on its Web site." According to that article, Defendant McMaster told *The State* that, to his knowledge, South Carolina is the first state to explore the possibility of criminal charges against CEO Jim Buckmaster and other top officers of the San Francisco-based company. The article also reported that Defendant McMaster had stated that he will seek to charge Mr. Buckmaster and other company officials under state prostitution or obscenity laws. A true and correct copy of the May 6 article that appeared on TheState.com is appended hereto as Exhibit F.

50. On May 13, 2009, a lawyer representing craigslist met with officials within of the Office of the Attorney General of South Carolina to discuss the additional voluntary measures craigslist had implemented the previous day — including the closure of the erotic services subcategory and the employment of manual advance review of new postings to the newly opened adult services category — and to discuss Defendant McMaster's public threat to conduct a criminal investigation and prosecution of craigslist's management. Among other things, craigslist's lawyer explained at that meeting that federal law, including 47 U.S.C. § 230 and the First Amendment, shield craigslist from any such prosecution.

51. Later that same day, TheState.com displayed an article reporting that Defendant McMaster will not withdraw his "threat of criminal prosecution." The article reported that Defendant McMaster derided craigslist's latest efforts as "nothing" and quoted Defendant McMaster as saying, "The only agreement we could have is they block everything (related to prostitution and obscenity) in South Carolina." A true and correct copy of the May 13 article that appeared on TheState.com is attached hereto as Exhibit G.

52. On May 14, 2009, craigslist's counsel informed Defendant McMaster by letter of the extensive measures craigslist had undertaken and set forth the legal principles barring any potential prosecution of craigslist. A true and correct copy of the May 14 letter from craigslist's counsel to John McIntosh, Deputy Attorney General, is attached hereto as Exhibit H.

53. On May 15, 2009, Deputy Attorney General John McIntosh replied to craigslist's letter of May 14 expressing his office's concern about "the facilitation of

prostitution in South Carolina" and assuring craigslist that "[p]rior to any prosecution in which this office is involved, you will certainly be allowed a reasonable opportunity to respond." A true and correct copy of the May 15 letter from John McIntosh, Deputy Attorney General, to craigslist's counsel is attached hereto as Exhibit I.

54. Later on May 15, 2009, just a few hours after craigslist's counsel received McIntosh's letter, Defendant McMaster's office posted on its official website at www.scattorneygeneral.com the following announcement:

> "As of 5:00 p.m. this afternoon, the craigslist South Carolina site continues to display advertisements for prostitution and graphic pornographic material. This content was not removed as we requested. We have no alternative but to move forward with criminal investigation and potential prosecution."

A true and correct copy of Defendant McMaster's May 15 posting is attached hereto as Exhibit J.

55. On May 15, 2009, the AP newswire reported: "The South Carolina attorney general says the clock for Craigslist to clean up its online classified site starts Friday evening, and he will prosecute executives if prostitution ads from the state remain on the site." The newswire quoted Defendant McMaster as follows: "'We were hoping at 5 p.m. all those ads would be gone, and we'd be able to move on to other things,'" [McMaster] said. "'Because they're not off, we won't be able to end our monitoring and scrutiny. … All we're asking Craigslist to do is take the prostitution ads off its Web site.'" A true and correct copy of the May 15 AP report is attached hereto as Exhibit K

56. Also on May 16, 2009, TheState.com reported: "Attorney General Henry McMaster has launched his own investigation of Craigslist for possible prostitution and pornography as his own deadline to block such classified ads passed Friday afternoon.

‘We will have an active investigation in the office into Craigslist,’ McMaster said. ‘This content was not removed as we requested. We have no alternative.’” The article further reported: “McMaster, widely believed to be a GOP candidate for governor, said he is unaware of any other attorney general who is considering criminal charges. He cited aiding and abetting prostitution, obscenity and conspiracy as possible offenses. Craigslist executives could be tried in their absence and face extradition to South Carolina after a third offense of aiding in prostitution.” A true and correct copy of the May 16 article on TheState.com is attached hereto as Exhibit L.

57. Defendant McMaster also participated in an interview with Fox News on May 16, 2009, wherein he stated:

> “We opened an investigation at 5:01 on Friday, as promised. . . . We are preparing for a prosecution. We are investigating. We are moving forward. . . . . The #1 defendant is Mr. Jim Buckmaster, who is the man in charge of craigslist.. . . . craigslist is a big promoter and facilitator of prostitution.”

A video recording of Defendant McMaster’s May 16 interview with Fox News can be found at: www.palmettoscoop.com/2009/05/18/mcmaster-moves-forward-with-craigslist-case/.

58. On May 18, 2009, the *Wall Street Journal*, in its online edition, reported:

> “On May 5, the Palmetto State’s Attorney General Henry McMaster threatened to prosecute executives form the online classifieds site [craigslist], if ads on the site play a role in a prostitution case in South Carolina.
>
> Then last week, Craigslist announced steps to introduce a new review system for every single adult services listing on the site. It did this after consulting with the attorneys general from several states, who complained the site had become a preferred way for prostitutes to advertise their services.
>
> McMaster wasn’t satisfied. On Friday, he reiterated his threat, saying the South Carolina portion of the site still displayed ads for prostitution. ‘We have no

> alternative but to move forward with criminal investigation and potential prosecution, McMaster wrote on his site.'"
>
> [. . .]
>
> On Monday afternoon, McMaster's communications director Mark Plowden said that the 'matter is under criminal investigation,' and that the AG's statement from Friday was still current."

A true and correct copy of the May 18 *Wall Street Journal* article is attached hereto as Exhibit M.

59. On May 18, in an interview on the Fox Business network, Defendant McMaster again stated that he is conducting an active criminal investigation against craigslist for aiding and abetting prostitution, and likened craigslist "to a hotel or motel owner that knows prostitution is going on on their premises and fails to do anything about it especially after having been told." A video recording of Defendant McMaster's May 18 interview with Fox Business can be found at: http://www.foxbusiness.com/search-results/m/22316480/ag-to-craigslist-clean-up-or-else.htm#q=mcmaster

60. As a practical matter, the only way for craigslist to assure compliance with Defendant McMaster's demands would be to shut down completely all portions of its website dedicated to the State of South Carolina. This is so because McMaster has demanded that, in order to avoid criminal investigation and prosecution, craigslist must prevent third parties from posting ads or notices that may contain material McMaster has identified as illegal, and the only way to assure that such material is not posted would be to shut down entirely all portions of the site dedicated to the state of South Carolina.

61. In fact, given the generally open architecture of the craigslist website, which open architecture is manifestly one of the greatest success stories across the entire Internet, and from which open architecture the people of South Carolina have greatly benefited and continue to benefit, it is possible today, despite craigslist's best efforts, for any person with Internet access, whether inside or outside of South Carolina, to create and successfully post to any category or subcategory available on the South Carolina portions of the website (other than the new adult services category, which is subject to manual review) an ad that solicits prostitution or contains a graphic pornographic image. Accordingly, the only way for craigslist to assure that material of that sort is not posted on the South Carolina craigslist websites would be to shut down those websites entirely.

62. The craigslist South Carolina websites provide a thriving free marketplace for South Carolinians in search of jobs, housing, automobiles, for sale items, local services, community information, event listings, and just about everything else they may need in their everyday lives. Mr. McMaster is threatening to criminally prosecute craigslist if it does not shut down all services for South Carolina, so as to physically prevent local craigslist users or anyone else from posting an ad that he might allege to be illegal.

63. Given the specter of criminal prosecution of craigslist and its management arising from Defendant McMaster’s threats, and given the persistence of those threats notwithstanding craigslist’s recent announcement and implementation of new measures — including termination of the “erotic” subcategory and establishment of a new “adult services” subcategory in which all postings are being subjected to advance manual review

— craigslist is presently faced with the choice of either shutting down completely all portions of its website upon which the people of South Carolina depend for their everyday needs, or putting itself and its management at risk of criminal prosecution by Defendants.

Federal Legal Prohibitions of The Threatened Prosecution

64. In fact, contrary to Defendant McMaster's public threat of criminal prosecution of craigslist management, craigslist and its management cannot, as a matter of applicable federal law, be prosecuted or held liable under state law for content that third parties post on its website.

65. In particular, any such prosecution or liability is barred by Section 230 of the Communications Decency Act, which states in relevant part that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). The Act further states that no provider of an interactive computer service shall be held liable on account of "(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1)." 47 U.S.C. § 230(c)(2). These provisions immunize craigslist from any civil or criminal action or liability that might otherwise be imposed under any otherwise applicable law of South Carolina or any other State, as is further

confirmed by 47 U.S.C. § 230(e)(3), which declares that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."

66. In the seminal decision construing Section 230(c)(1), the U.S. Court of Appeals for the Fourth Circuit held that "Section 230 . . . plainly immunizes computer service providers . . . from liability for information that originates with third parties." Zeran v. America Online, Inc., 129 F.3d 327, 328 (4th Cir. 1997) (Wilkinson, C.J.). The Fourth Circuit has further stated, in particular, that "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions — such as deciding whether to publish, withdraw, postpone or alter content" necessarily "treat[]" the defendant as a "publisher" of that content and therefore "are barred." Id. at 330, 333.

67. Section 230 advances important federal policies with regard to the Internet, including but not limited to Congress's intention to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2).

68. Section 230 bars Defendant McMaster from commencing any legal proceeding that seeks to hold craigslist or its management liable either (a) for allegedly unlawful content (such as materials purportedly violative of state anti-pornography laws or advertisements that can be construed as soliciting prostitution) posted by third parties or (b) on account of measures craigslist has elected to undertake voluntarily and in good faith to restrict or block access to material it considers objectionable. These immunities extend to criminal as well as civil liability. See, e.g., Voicenet Communications, Inc. v.

Corbett, 2006 WL 2506318, *4 (E.D.Pa. 2006) ("the plain language of the CDA provides internet service providers immunity from inconsistent state criminal laws"); People v. Gourlay, 2009 WL 529216, *3 (Mich. App. Mar. 1, 2009) ("Congress intended that no liability may be imposed under a state criminal law that is inconsistent with § 230").

69. Defendant McMaster's threatened prosecution of craigslist and its management is infringing, and absent immediate relief from the Court will continue to infringe, the free speech rights of craigslist, its management, and its users in violation of the First Amendment made applicable to the several states by the Fourteenth Amendment to the U.S. Constitution.

70. Defendant McMaster's actions constitute an unlawful prior restraint on speech. Bantam Books, Inc. v. Sullivan, 372 U.S 58 (1963). Prior restraints on speech are presumptively invalid, and are permissible only where the targets of such restraints are afforded specific procedural protections. Thomas v. Chicago Park District, 534 U.S. 316, 321 (2002). The Supreme Court has held that threats of prosecution can operate as the equivalent of a system of censorship. Bantam Books, 372 U.S. at 67.

71. Defendant McMaster's actions also constitute a content-based speech restriction that is not narrowly tailored to advance any compelling governmental interest. Ashcroft v. Free Speech Coalition, 535 U. S. 234, 252-53 (2002). The effect of Defendant McMaster's threat is to shut down the operation of craigslist's South Carolina-directed site, thereby silencing vast amounts of protected speech. The First Amendment forbids silencing or chilling substantial amounts of protected speech in the course of proscribing unprotected speech. Id. at 255.

72. Furthermore, the First Amendment bars Defendant McMaster from seeking to impose criminal liability on an operator of an information clearinghouse for allegedly unlawful third-party content unless, at a minimum, the operator specifically knew of such content and its unlawful nature. Smith v. California, 361 U.S. 147 (1959).

73. Defendant McMaster's ongoing threats to prosecute craigslist and its management "place[] an undue burden on interstate commerce by regulating commerce occurring wholly outside of South Carolina." Southeast Booksellers Ass'n v. McMaster, 371 F.Supp.2d 773, 787 (D.S.C. 2005) (citing Healy v. Beer Inst., 491 U.S. 324, 336, 109 (1989)); see also id. ("In the words of the Fourth Circuit, '[t]he content of the internet is analogous to the content of the night sky. One state simply cannot block a constellation from the view of its own citizens without blocking or affecting the view of the citizens of other states.'") (quoting PSINet, Inc. v. Chapman, 362 F.3d 227, 240 (4th Cir. 2004)). In addition, Defendant McMaster's threatened prosecution would impose burdens on interstate commerce that "are excessive in relation to the local benefit it confers." PSINet, Inc., 362 F.3d at 240.

CAUSES OF ACTION

COUNT I

Violation of the Communications Decency Act, 47 U.S.C. § 230(c), and 42 U.S.C. § 1983

74. Plaintiff repeats and realleges paragraphs 1-64.

75. The key operative provision of Section 230 provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1).

76. Section 230 broadly immunizes providers of interactive computer services from liability for the dissemination of third-party content.

77. Section 230 immunity exists whenever (1) the party claiming immunity is "a provider … of an interactive computer service," (2) the allegedly unlawful content was "provided by another information content provider," and (3) another party seek to "treat[]" the party claiming immunity as the "publisher or speaker" of that information. 47 U.S.C. § 230(c)(1).

78. craigslist is a "provider" of an "interactive computer service" within the meaning of 47 U.S.C. §§ 230(c)(1) and 230(f)(2).

79. All of the content appearing on the craigslist website that is the subject of Defendant McMaster's threatened criminal prosecution was created and developed by third parties (i.e., the users of the website) and therefore constitutes "information" provided by "another information content provider."

80. Defendant McMaster's threatened prosecution of craigslist and its management constitutes, and any action to follow through on such threat would constitute, "treat[ment]" of craigslist as the "publisher or speaker" of third-party content, in violation of 47 U.S.C. § 230(c)(1).

81. Section 230 specifically provides that "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3). This provision confirms the preemptive effect of Section 230. Moreover, by prohibiting not merely the imposition of liability, but also the *bringing* of any cause of action, this provision demonstrates that Section 230 is not

merely a defense to liability, but also an immunity from being haled into court at all on charges based on third-party content.

82. In sum, Defendant McMaster's threatened prosecution of craigslist and its management violates, and any steps he takes to make good on that threat would further violate, craigslist’s statutory right to be free from liability for allegedly unlawful third-party content, as a well as from the burdens of having to defend itself against such liability.

COUNT II

Violation of the Rights of craigslist, its Management and its Users Under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983

83. Plaintiff repeats and realleges paragraphs 1-73

84. Defendant McMaster's threatened prosecution of craigslist and its management constitutes an exercise of prosecutorial authority under color of state law.

85. Defendant McMaster's threatened prosecution of craigslist and its management violates the rights of craigslist, its management, and its users under the First and Fourteenth Amendments to the United States Constitution because it constitutes an unlawful prior restraint on speech.

86. Defendant McMaster's threatened prosecution of craigslist and its management violates the rights of craigslist, its management, and its users under the First and Fourteenth Amendments to the United States Constitution because it is not the least restrictive means of accomplishing any compelling governmental purpose and because it is not narrowly tailored to accomplish any compelling governmental purpose.

87. Defendant McMaster's threatened prosecution violates the rights of craigslist, its management, and its users under the First and Fourteenth Amendments of the United States Constitution because it seeks to impose criminal liability on craigslist, in its capacity as the operator of an information clearinghouse, in the absence of proof that craigslist in fact knew about the presence and unlawful nature of a particular item of third-party content on its website, and despite such knowledge deliberately failed to take action to block or remove that particular item.

COUNT III

Violation of the Commerce Clause of the United States Constitution

88. Plaintiff repeats and realleges paragraphs 1-78.

89. Defendant McMaster's threatened prosecution of craigslist and its management violates the Commerce Clause of the United States Constitution because it seeks to apply South Carolina law to regulate commercial transactions that take place wholly outside of the State of South Carolina.

90. Defendant McMaster's threatened prosecution of craigslist and its management violates the Commerce Clause because it seeks to apply South Carolina law in manner that constitutes an unreasonable and undue burden on interstate commerce that is excessive in relation to any local benefit conferred on the State of South Carolina.

COUNT IV

Declaration of the Parties' Respective Rights under 28 U.S.C. § 2201

91. Plaintiff repeats and realleges paragraphs 1-81.

92. Plaintiff is a provider of an interactive computer service within the meaning of 47 U.S.C. §§ 230(c)(1) and 230(f)(2).

93. All of the content appearing on the craigslist website that is the subject of Defendant McMaster's threatened criminal prosecution was created and developed by third-parties and therefore constitutes "information provided by another information content provider" within the meaning of 47 U.S.C. §§ 230(c)(1) and 230(f)(3).

94. Defendant McMaster's threatened prosecution of craigslist and its management constitutes, and any action to follow through on such threat would constitute, "treat[ment]" of craigslist as the "publisher or speaker" of third-party content, in violation of 47 U.S.C. §§ 230(c)(1) and 230(e)(3).

95. As such, Plaintiff is immune from liability for the actions and omissions alleged by the Defendants as a provider of an interactive computer service for content posted on its site by third parties.

96. Plaintiff's speech and the speech of its users are also protected by the First Amendment made applicable to the States by the Fourteenth Amendment to the U.S. Constitution.

97. Defendant McMaster's threatened prosecution of craigslist and its management for speaking and posting the speech of others, or for their failure to remove same, including but not limited to materials deemed by Defendants to constitute solicitation of prostitution and/or obscenity, would violate the Commerce Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Declare that Defendant McMaster threatened prosecution of craigslist and its management is impermissible in light of 47 U.S.C. § 230 and violative of the First and Fourteenth Amendments and the Commerce Clause of the United States Constitution;

B. Permanently enjoin Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from issuing further threats of prosecution against craigslist or its officers and employees in relation to content posted by third parties on craigslist's website and from initiating or pursuing any such prosecution;

C. Award Plaintiff its reasonable costs and attorney fees pursuant to 42 U.S.C. § 1988; and

D. Grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,

CRAIGSLIST, INC.

s/*Joseph P. Griffith, Jr.*

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